

FILED

MAR 11 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

RONNEY HARRIMAN,)	CV 12-56-H-DLC-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
DR. KOHUT and DR. RANTZ,)	
)	
Defendants.)	
_____)	

United States Magistrate Judge Keith Strong entered Findings and Recommendation on February 11, 2013, and recommended dismissing Plaintiff Ronney Harriman's Amended Complaint because Harriman's allegations fail to state a claim upon which relief can be granted. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and

Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Harriman alleges Defendants violated his Eighth Amendment rights by failing to provide him with surgery to repair a hernia. He alleges only that he disagreed with the course of treatment chosen by the prison medical staff. Judge Strong concluded that Harriman’s allegations, in his initial Complaint, failed to state a claim upon which relief may be granted as set forth in the Order (doc. 4) dated October 16, 2012. Further, Judge Strong concluded that Harriman was given an opportunity to correct the defects in his complaint and he provided no new facts to establish a constitutional violation. After a review of Judge Strong’s Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (doc. 8) are adopted in full. This matter is DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted.

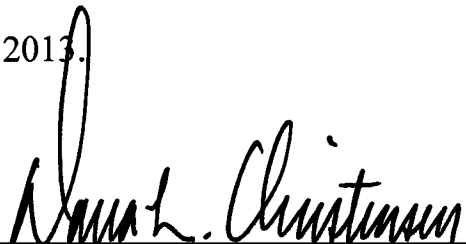
The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the docket shall reflect that the Court

certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. Mr. Harriman's failure to state a claim is so clear no reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

The docket shall also reflect this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

DATED this 11th day of March, 2013.



Dana L. Christensen, District Judge
United States District Court